



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 22, 2022

IN THE MATTER OF:

Appeal Board No. 622950

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause, or in the alternative, disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 27, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed April 5, 2022 (), the Administrative Law Judge overruled the initial determination disqualifying the claimant from receiving benefits on the basis that the claimant lost employment through misconduct and sustained the initial determination disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause.

The claimant appealed the Judge's decision insofar as the decision sustained the initial determination disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a medical coder for a hospital in excess of sixteen years. The claimant received her childhood vaccinations, the flu vaccination through 2010, and uses prescribed blood pressure medications and an inhaler.

On August 30, 2021, the employer notified its employees, including the claimant, of the New York State vaccination mandate applicable to the hospital and its employees which required that all employees were to receive the Covid-19 vaccination, or a first dose, by September 27, 2021, or face discharge. No religious exemptions were being allowed; instead, the employer would only consider medical exemptions. The claimant did not receive the Covid-19 vaccination by the required date and was discharged, effective September 27, 2021.

OPINION: The credible evidence establishes that the claimant provoked her own discharge when she refused to get vaccinated despite the New York State mandate applicable to her employer/employment. It is undisputed that the claimant worked as an employee in a healthcare facility and was therefore subject to the COVID-19 vaccination mandate issued by New York State. As the claimant was aware of the vaccine mandate and that she could be separated from employment if she chose not to be vaccinated, the claimant provoked her own discharge. A provoked discharge occurs when a claimant voluntarily violates a legitimate known obligation, leaving the employer no choice but discharge. A provoked discharge is considered a voluntary leaving of employment without good cause for unemployment insurance purposes and subjects a claimant to a disqualification from receiving benefits. (See *Matter of DeGrego*, 39 NY2d 180 [3d Dept.1976]).

The employer, a hospital, bore a legitimate obligation under law to seek the claimant's vaccination. Although the claimant argues she should have been afforded a religious exemption from vaccination as per Title VII, her contention is not persuasive. We note that the New York State mandate allowed for no religious exemptions after September 2021. Further, in *Dr. A et al v. Hochul*, 142 S.Ct. 552, 211 L. Ed. 2d. 414 (2021), the Court denied an application for injunctive relief in a challenge to New York State's law removing religious exemptions from its COVID-19 vaccine mandate for hospital workers, cert. denied, 142 S. Ct. 2569 (2022). Additionally, the Second Circuit in *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266 (2d Cir. 2021), upheld New York's COVID-19 vaccination mandate for hospital employees without

any allowance for religious exemptions. The Supreme Court has also upheld the vaccine requirement for healthcare workers in healthcare facilities receiving Medicare or Medicaid funds. (See *Matter of Biden v. Missouri*, 211 L. Ed. 2d. 433 [2022]).

We find it of further significance that though the claimant contends that she is a Christian who believes that God gave her an immune system and she cannot alter its design by vaccination, she has previously been vaccinated. She also utilizes prescription blood pressure medication to control her existing medical condition. We therefore find that the claimant has undermined the reliability of her assertions and has failed to demonstrate good cause for her refusal to obey the obligation for vaccination.

We conclude, then, that the claimant has offered neither a reliable nor a reasonable excuse for refusing the vaccination. In failing to receive the vaccination by September 27, 2021, the claimant has left the employer no choice but to discharge her as required by the New York State mandate. Accordingly, we conclude that the claimant was therefore disqualified from unemployment insurance benefits as of September 27, 2021.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER